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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1979

Nos. 79-421, 79-425 and 79-435

JOHN M. BRYANT, et al.,
Petitioners,
vs.
BEN YELLEN, et al.,
Respondents.

STATE OF CALIFORNIA, et al.,
Petitioners,
vs.
BEN YELLEN, et al.,
Respondents.

IMPERIAL IRRIGATION DISTRICT, et al.,
Petitioners,
vs.
BEN YELLEN, et al.,
Respondents.

RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI

ARTHUR BRUNWASSER
240 Stockton Street, Third Floor
San Francisco, CA 94108
Telephone: (415) 391-2203
Attorney for Respondents

BOWNE-PERNAU WALSH • 1045 SANSOME ST. • S.F., CA 94111 • (415) 981-7682

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STATEMENT

The petitions before the Court are filed in behalf of 150 farming operations of 1,000 acres or more who own most of the excess lands in the Imperial Valley of California.[1] This dispute has been in the courts for 12 years. The Court of Appeals considered the highly technical and overly ingenious arguments of petitioners over a period of 39

[1]The latest figures available to the U.S. Department of Agriculture are for the year 1974. They show that at that time, there were 715 farming operations in the Imperial Irrigation District averaging 716 acres per farm. Farm numbers and sizes were distributed as follows:

Land in Farms	Number of Farms
Less than 50 acres	194
50 to 179 acres	141
180 to 499 acres	139
500 to 999 acres	91
1,000 to 1,999 acres	73
2,000 acres and over	77

121,892 acres were farmed by corporate owners, with an average of 1,463 acres each. Farms of all types of ownership were distributed by type of business organization as follows:

Type of Business	Number	Average Size
Sole proprietorships	505	490 acres
Partnerships	120	1,175 acres
Corporations	84	1,463 acres
Others	6	113 acres

The Department of Agriculture concluded:

> "The U.S. Department of the Interior has estimated 265,000 acres (60 percent of the irrigated acreage) in the District are excess land. It seems likely that much of the excess land is farmed by the 150 farming operations that exceed 1,000 acres in 1974 and is probably owned by the 204 partnerships and corporations shown above."
>
> *The U.S. Department of the Interior's Proposed Rules for Enforcement of the Reclamation Act of 1902: An Economic Impact Analysis,* Staff Report by the Economics, Statistics, and Cooperatives Service, U.S. Dept. of Agriculture, No. ECCS-04, p. 17 (1978).

months while this case was under submission until the principal opinion was filed. The Court had before it a total of 17 detailed, extensive and sometimes over-length briefs on both the merits and procedural issues of standing and intervention. Almost 300 trial exhibits, consisting of both legislative and administrative materials, were transferred to the panel for review.

The carefully documented, well-reasoned principal opinion was immediately challenged by petitioners who sought rehearing and suggested rehearing in banc. The rehearing petitions raised most of the issues petitioners seek to raise in this Court. The panel requested and received an Answer from respondents. Rule 40(a), Fed.R.App.P. Although the Government did not file a brief in the Court of Appeals, the Assistant Attorney General of the Land and Natural Resources Division notified the Court that "[T]he United States agrees with and supports the response" of respondents to the rehearing petitions. The panel considered the rehearing petitions for an additional 20 months and then filed its supplemental opinion denying rehearing. The panel voted to reject the suggestions for a rehearing in banc. The full Court was advised of the suggestions for an in banc rehearing, and no judge in regular active service requested a vote on the suggestion. Rule 35(b), Fed.R. App.P. Dist.App. 69a-70a[2], 595 F.2d at 528.

[2]"Dist.App." will be used in this memorandum to designate the appendix of petitioner Imperial Irrigation District. "Dist. Pet." will designate the District's petition and "Bryant Pet." will designate the petition of Petitioners John M. Bryant, et al.

The Imperial Irrigation District (hereafter "District") was the original defendant in the District Court. The District is a unit of self-government organized to deal with water distribution (*Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719, 721-23 (1973)), and the conduit for the federal water subsidy between the federal government and the landowners. The Bryant

The Application of Reclamation Law to Privately Developed Lands

Reclamation projects generally serve multiple purposes such as flood control, recreation, protection of fish and wildlife, and irrigation. The proportionate costs of constructing a project attributable to irrigation are repaid to the Government over a period of 40 years, often extended to 50 years, interest free. In general, repayment today is by state or quasi-state agencies such as irrigation or water districts which in turn pass on these repayment costs to the owners of land who receive benefits from the project.

The Reclammation Act, originally enacted in 1902 and supplemented on numerous occasions thereafter, provides in general for the construction and operation by the Government of various dams and appurtenant facilities for the purpose of storing, conserving and regulating the supply of water in the Western states. Although couched in terms which appear to limit its application to the "re-claiming" of arid public lands, privately owned lands having privately developed means of irrigation have been brought

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petitioners intervened in the District Court as the class representatives of the owners of excess lands and carried the major burden of defending the case against enforcement of the 160 acre limitation in both the District Court and the Court of Appeals. They are referred to in the lower court decisions and the record as the "landowner defendants".

The State of California also intervened as a defendant in the District Court. However, all parties agreed that the reclamation law had no application to the Imperial Water Fowl Management Area owned by the State of California, thus granting California all the relief it requested. 332 F.Supp. 11; 595 F.2d 524. The State of California no longer has a direct interest in the subject matter of this controversy and this Court has no jurisdiction to consider its petition.

into reclamation projects almost from the beginning of the reclamation program in 1902. *Ivanhoe Irrig. Dist. v. McCracken,* 357 U.S. 275, 283 (1958); *United States v. Tulare Lake Canal Co.,* 535 F.2d 1093, 1112 (1977), *cert. denied,* 429 U.S. 1121. As far back as 1903, the First Annual Report of the Reclamation Service said:

> Recognizing the fact that there is scarecly a section of the country in the United States, even in the most sparsely settled regions of the West, where an irrigation project would not involve the reclamation of lands in *private ownership*, as well as those belonging to the United States, this section [§ 5 of the 1902 Act, 32 Stat. 389, 43 U.S.C. § 431] authorizes the sale of the right to use water for land in private ownership, to be limited, however, to the amount required for a tract not exceeding 160 acres. (emphasis added). *First Annual Report of the Reclamation Service,* H. Doc. No. 79, 57th Cong., 2d Sess. 70 (1902).

The existence of pre-project irrigation facilities, such as those in the Imperial Valley, is without significance when considering the application of reclamation law. Bringing "new water" to an area is not the only, or even the primary, benefit of the reclamation program. It is the regulated flow of stored water that is the major benefit of a reclamation project. *United States v. Tulare Lake Canal Co., supra,* 535 F.2d at 1113. The regulated flow of the previously erratic Colorado River not only saved the Imperial Valley from periodic flooding and droughts but also brought about a vast increase in agricultural productivity which would have been impossible without the project. For example, at trial, a government witness testified that agricultural losses in the Imperial Valley during the drought of

1934 proximated $10,000,000, or about a 25 percent loss of the total value of agricultural production. Water shortages would have been approximately 60-75% of the Valley's requirements without the project in 1940, 1944, 1948, 1956, 1960, 1963 and 1966, and estimated losses during these years would have come to $95,000,000. (RT 454:6-455:3)

These vast benefits, only briefly summarized above, were provided to the landowners of the Imperial Valley free of cost. The District's financial obligation for the cost of constructing the All American Canal was fixed at $25,000,000. To date, all payments have been made from net power revenues derived from the sale of electrical energy generated by hydro-electrical facilities on the All American Canal. Although the District spent approximately $15,000,000 to construct the hydro-electric facilities, (Dist.App.84a, 322 F.Supp. 14) these facilities were built at the expense of all of the approximately 75,000 residents of the Valley, not the 150 farming operations in whose behalf the present petitions have been filed. With respect to the power generating facilities, a government witness testified at trial that the Bureau of Reclamation provided foundation structures at a cost of $1,363,000 for the powerhouse structure foundations which were included in the repayment contract. (RT 458:23-459:11) The federal government provided additional financial assistance for the construction of the power generating facilities. During the period of construction, 1935 through 1938, there was a very unfavorable bond market and the Public Works Administration provided grants for over $2,000,000 and there were loans by the Public Works Administration of over $2,500,000 for

two power drops. The 1938 Annual Report of the District stated: "You own a modern efficient power service representing, on completion, an investment of $5,360,000, more than $2,000,000 of which was a direct gift to you from the Federal Government." (*Id.* 459:23-460:10)

In summary, government witnesses testified that all of the various benefits provided to the landowners of the Imperial Valley, including the repayment of construction costs on an interest free basis over a period of 50 years, would average $330 to $1,060 per acre over the 440,000 acres of irrigated land in the Valley. (RT 478:22-24) The District must certainly be speaking with tongue in cheek when it refers to the "windfall" expected by respondents as a result of this case.

The benefits of the reclamation program are so vast and significant that owners of excess land have never hestitated to execute the recordable contract required by § 46 of the Omnibus Adjustment Act of 1926, 44 Stat. 649, 42 U.S.C. § 423e. The historic willingness of owners of more than 160 acres to execute recordable contracts was illustrated by the testimony of Harry W. Horton, who was chief counsel for the Imperial Irrigation District. In testifying about the 160 acre limitation and the requirement of the recordable contract in § 46 (which requires the landowner to dispose of his excess lands within 10 years as a condition to the receipt of project water on the excess lands), Mr. Horton said:

> Let us lay the cards on the table . . . I will give you my own opinion of Jack O'Neill's willingness to sign the 160 acre limitation. He thinks if he gets water for ten years on there without having to sell it, he can make

enough money out of it so he can afford to sell it at any old price. *Hearings on S1425, 2541, 3448*, Before Subcomm. on Irrigation and Reclamation of Sen. Comm. on Interior and Insular Affairs, 85th Cong., 2d Sess. 87, 88 (1958).

Background of the Dispute

This case had its genesis in an attempt by the government to resolve conflicting administrative interpretations concerning the application of the 160-acre limitation of reclamation law under the Project Act in the Imperial and Coachella Valleys of California. Both valleys are served by the All American Canal. When Colorado River water was initially stored behind Hoover Dam in Lake Mead and delivered through the newly completed All American Canal in the early 1940's, the acreage limitation was not applied in the Imperial Valley, purportedly because of the informal letter opinion of Secretary Wilbur. Dist. App. 213a, 71 I.D. 529. A formal Solicitor's opinion was issued on May 31, 1945, concluding that the acreage limitation did apply in the Coachella Valley. Sol.Op.M-33902, 71 I.D. 533. Thus, the acreage limitation was interpreted to apply in the Coachella Valley, but not the Imperial Valley, although water was delivered under the Project Act to both through the All American Canal.

Doubts were soon raised within the Interior Department as to the legal conclusions of the Wilbur letter. The conflicting decisions were resolved administratively on December 31, 1964 when Frank J. Barry, Solicitor of the Department of Interior, issued his opinion, concluding:

> The Boulder Canyon Project Act by its plain terms incorporates those provisions of law which impose

> acreage limitations on lands served from federal reclamation projects. The Boulder Canyon Act works, including the All-American Canal, Imperial Dam and appurtenant structures, are federal reclamation facilities. Nothing in the history of the Project Act and nothing in the legislative history of reclamation law modifies what has been said by Congress as its plain intent.
>
> The interpretation in the Wilbur letter of the meaning of the Project Act was clearly wrong and could not effect a change in the statutes enacted by Congress.
>
> . . .
>
> I have concluded, after a consideration of all issues, that. . . . : Privately owned land in Imperial Irrigation District, even those assumed to have vested Colorado River water rights, are subject to the excess land laws. Sol.Op.M-36675, 71 I.D. 496, 518-19.

Petitioners' response to Solicitor Barry's opinion is to ignore it. But the Court of Appeals considered the Barry opinion to be "thorough and comprehensive" (Dist.App. 54a, 559 F.2d 539) while rejecting the informal Wilbur letter's "rather simplistic analysis not contained in a formal opinion" (Dist.App.55a, 559 F.2d 539). Careful examination of the Wilbur letter reveals that it fails to mention the various arguments advanced by petitioners in this Court to support their claim that the Project Act does not require application of the reclamation laws in the Imperial Valley.

Almost four years after the government filed suit for a declaratory judgment, the District Court entered judgment for the District and the intervening excess landowners who are before this Court as petitioners. The Government did

not appeal.[3] Respondents intervened for purposes of appeal and the decision of the District Court was reversed.

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[3]The District refers to private correspondence from former Solicitor General Griswold defending his decision not to appeal, but does not bother to set that explanation in context. An examination of the Congressional Record discloses that Solicitor General Griswold was compelled to provide a private explanation—no public explanation was ever given—because of a critical letter he received from a private citizen in Manhattan, Kansas who read about his decision not to appeal in a magazine:

> . . . The report of your part in the decision not to appeal makes you appear to be a man of little integrity. If you can explain how a man with respect for the law of the land, as passed by Congress and validated by the President's signature can countenance such action, or lack of it, I would appreciate hearing it.
>
> The whole action smells of rot at the core of our government and makes me wonder whether the long-haired kids who talk of getting rid of it may not have some validity to their thinking.
>
> Yours with dwindling respect,
>
> Mrs. Stephen L. Stover.

It is significant that Solicitor general Griswold's letter and its erroneous conclusion evoked a response from Professor Joseph L. Sax, author of the leading text on the Reclamation Act:

> September 1, 1971.
>
> Hon. Erwin N. Griswold,
>
> Solicitor General of the United States, U.S. Department of Justice, Washington, D.C.
>
> Dear General Griswold:
>
> Someone sent me a copy of a letter that went out under your signature, dated June 1, 1971, to Mrs. Stephen L. Stover of Manhattan, Kansas. The letter inquired about the position of the Justice Department in the excess land case involving the Imperial Valley in California.
>
> As one who has written about the Reclamation law, I was surprised to see in your letter the following:
>
> ". . . There is a provision in the reclamation laws which provide that when land is reclaimed through a federal project, land holdings cannot exceed 160 acres . . . no land was reclaimed by the construction of the All-American Canal."
>
> Occasionally one recalls the warnings he received in law school, among them the danger in paraphrasing statutory language. My recollection is that the excess land provision of the Reclamation Law, 43 U.S.C. Section 431, says:

ARGUMENT

There Are No Special And Important Reasons For Granting The Writ

The petitioners do not contend that the decision of the Court of Appeals is in conflict with that of another court of appeals on the same matter. They do not even suggest that the determination of the applicability of the 160-acre limitation of reclamation law in the Imperial Irrigation District of California is anything other than an issue of unique local importance. The decision by the Ninth Circuit is completely consistent with its earlier decision in *United*

> "No right to the use of water for land in private ownership shall be sold for a tract exceeding 160 acres to any one land owner."
>
> I recall no general provision in the law that limits the excess land law to land "reclaimed through a federal project," and if you examine the legislative history of the statute, you will recall that Representative Newlands, the sponsor of the Act, took no such view. 36 Cong.Rec. 6734 (1902). Of course a great many reclamation projects involve the supply of supplementary water to land already in cultivation. To the best of my knowledge it has never been thought that this fact exempted the project from the provision of the excess land law.
>
> I recognize that the Imperial Valley case was a complex one; but I think Mrs. Stover was entitled to a more accurate explanation.
>
> Very truly yours,
>
> Joseph L. Sax,
>
> Professor of Law.

The correspondence of Solicitor General Griswold and Professor Sax is found in 117 Cong.Rec. 46226-46229 (1971). This decision not to appeal is also explained in Taylor, *Water, Land & Environment, Imperial Valley: Law Caught in the Winds of Politics*, 13 Natural Resources Journal 1, 17-23 (1973). Copies of the exchange of correspondence referred in the Congressional Record and Professor Taylor's commentary and Mrs. Stover's letter are reproduced in *Will The Family Farm Survive in America?* Joint Hearings before Senate Select Comm. on Small Business and Comm. on Interior and Insular Affairs, 94th Cong., 1st Sess., Part 1A, pp. 565-568, 571-574, 588-589. (1975). Another explanation was provided by the *Sacramento Bee* edition of September 16, 1973. *Id.* at 601-03.

States v. Tulare Canal Co., 535 F.2d 1093 (1977), *cert. denied*, 429 U.S. 1121[4] and this Court's decision in *Ivanhoe Irrig. Dist. v. McCracken*, 357 U.S. 275 (1958).

Petitioners seek to bring themselves within the standards of this Court's Rule 19(b) by alleging that the panel's decision is in conflict with the various decrees of this Court in the *Arizona v. California* litigation insofar as the present case may require the application of acreage limitation to the Imperial Valley despite the "present perfected rights" of the District. Significantly, neither Secretary Wilbur nor Executive Assistant Ely considered "present perfected rights" to be relevant to the issues raised by petitioners.

In the landmark case in the area of federal reclamation law, *Ivanhoe Irrig. Dist. v. McCracken*, this Court enunciated the controlling law of statutory construction:

> Significantly, where a particular project has been exempted because of its peculiar circumstances, the Congress has always made such exemption by express enactments. *Id.* at 292.[5]

[4]The landowners in *Tulare* sought to have the Federal courts rewrite the Flood Control Act of 1944 by providing the exemption Congress failed to adopt. The Ninth Circuit declined.

[5]This Court's reasoning is not subject to challenge. Where special circumstances exist, Congress has specifically provided for exemptions from the excess-land provisions of the Federal reclamation laws. Act of June 27, 1952, 66 Stat. 282 (San Luis Valley Project, Colorado):

> "The excess-land provisions of the Federal reclamation laws shall not be applicable to lands or to the ownership of lands which receive a supplemental or regulated supply of water from the San Luis Valley project, Colorado: . . ."

The Act of July 24, 1957, 71 Stat, 309 (Missouri River Basin, East Bench Unit) provides:

> "Except as provided in section 2 of this Act, the excess land provisions of the Federal reclamation laws shall not apply to lands in the . . . of the East Bench unit of the Missouri River Basin project, . . . that are irrigated under existing State water rights, whether the waters used for their irrigation are passed through, regulated by, or stored in the Clark Canyon Reservoir by the United States."

The Act of April 7, 1958, 72 Stat. 82 (Lower Rio Grande Project, Mercedes Division) provides:

> "The excess-land provisions of the Federal reclamation laws shall not be applicable to lands in this project which now have an irrigation water supply from sources other than a Federal reclamation project, and for which no new waters are being developed."

There are numerous other examples.

Act of June 16, 1938, 52 Stat. 764, 43 U.S.C. § 386 (Colorado-Big Thompson Project); Act of November 29, 1940, 54 Stat. 1219 (Truckee River and Humboldt Projects); Act of August 28, 1954, 68 Stat. 390 (Owl Creek Unit, Missouri River Basin Project); Act of August 6, 1956, 70 Stat. 1044, 43 U.S.C. § 422(f) (small reclamation projects); Act of September 4, 1957, 71 Stat. 608 (Kendrick Project); Act of December 22, 1959, 72 Stat. 641 (Lower Rio Grande Rehabilitation Project, La Feria Division); Act of October 1, 1962, 76 Stat. 677, 16 U.S.C. § 835a (Columbia Basin Project).

The reasons for these clear, unambiguous exemptions are explained by Professor Sax in 2 Waters and Water Rights, § 120 at pp. 215-16 Clark ed. (1967).

The Ninth Circuit, following the rule of *Ivanhoe*, and its own previously decided case of *United States v. Tulare Lake Canal Co., supra*, searched the language of the Project Act and was unable to find a specific exemption. Petitioners appear to be confused about the rule of statutory construction, for they emphasize its converse: *"The Project Act makes no mention of acreage limitations on private lands . . ."* Dist. Pet. 10 (emphasis by District).

Their argument that this Court's decision in *California v. United States*, 338 U.S. 645 (1978) intended to weaken the *Ivanhoe* rule in favor of protecting state water rights of individuals conflicting with the acreage limitation is without merit. The majority opinion of Mr. Justice Rehnquist did not conclude that individual water rights under

state law protected by Section 8 of the Reclamation Act of 1902 are superior to the 160-acre limitation provided in Section 5. To the contrary, Justice Rehnquist was perfectly clear when he pointed out that any purported clash between the acreage limitation mandated by Section 5 and the requirement in Section 8 for the application of state law could be resolved only in favor of Section 5. Section 5 was considered to be a specific congressional directive to which state water law must give way if inconsistent. *Id.*, 438 U.S. at 668-69, n. 21.

Petitioners Have Recognized That It Is In Congress, Not The Courts, Where Relief Is Available

In essence, the Court of Appeals declined the invitation to rewrite an act of Congress and held that a clearly erroneous administrative practice cannot thwart the plain purpose of a valid law. *United States v. City & County of San Francisco*, 310 U.S. 16, 31-32 (1940). This principle was acknowledged by the Department of the Interior shortly after the Project Act was enacted. Prior to execution of the Wilbur letter, Northcutt Ely, who was then Executive Assistant to Secretary Wilbur and is now Attorney for the District in the present case, recognized that the acreage limitation must be enforced in absence of legislative change:

> The Reclamation Law's Limitation of 160 acres to a particular owner presents a serious problem, in view of the fact that this, being an existing project, includes many farms with larger area. I see nothing to do but enforce it unless the Imperial Irrigation District can get new legislation. In any event, enforcement of this requirement would undoubtedly have a salutory effect on suspected speculative activities in that locality. 71. I.D. 528 (Nov. 4, 1930).[6]

Petitioners now acknowledge that their remedy lies with Congress, as the present attorney for the District recognized many years ago. Their Congressman, Clair W. Burgener, stated, while testifying last year before the Senate Subcommittee on Public Lands and Resources:

> "The lawyers tell us there is some reason why we would not end up in the Supreme Court." *Acreage Limitations in Bureau of Reclamation Projects*, Hearings before Subcomm. on Public Lands and Resources of Sen. Comm. on Energy and Natural Resources, 96 Cong. 2nd Sess., Part 3, 255 (1978).

The September 2, 1977 edition of *The Brawley News*, a newspaper in the Imperial Valley, provided the reason. It quoted Charles Bender, attorney for the Bryant petitioners, as stating that this case "doesn't have any broad impact on any other irrigation district".

So certain was Congressman Burgener about the outcome of this proceeding that he introduced a bill on January 14, 1978 to exempt the Imperial Irrigation District from all of the anti-monopoly provisions of the Reclamation Act. H.R. 13126, 96th Cong., 2d Sess. (1978).

On September 14, 1979, the Senate passed a bill to specifically exempt the Imperial Irrigation District from the anti-monopoly provisions of the reclamation law. In pertinent part, S.4, 96th Cong., 1st Sess., provides:

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[6]The excerpted portion from the record of the Interior Department was cited on numerous occasions throughout the course of this case. Although readily available, Mr. Ely was not called by petitioners to testify at trial to either explain the Department's contemporaneous construction of the Project Act quoted above or the questionable circumstances surrounding execution of the Wilbur letter.

Sec. 8 (c) (1) The following provisions of the Federal Reclamation Law shall not apply to land within the Imperial Irrigation District of California on January 1, 1979.

(A) Section 5 of the Act of June 17, 1902 (43 U.S.C. 431);

(B) Section 46 of the Act of May 25, 1926 (43 U.S.C. 423e); and

(C) any other provision of law amendatory or supplementary to either of such sections.

125 Cong. Rec. S-12594 (daily ed. Sept. 14, 1979)

On November 7 and 8, 1979, the House Subcommittee on Water and Power Resources of the Committee on Interior and Insular Affairs was scheduled to hold hearings in Denver, Colorado to consider legislative proposals presently before the House pertaining to the Reclamation Law, including S.14. *Press Release* from House Committee on Interior and Insular Affairs, October 11, 1979.

The utter futility of the present petitions is no better indicated than in the personal attacks hurled at the Court of Appeals by the Bryant petitioners both in this Court and before the Senate subcommittee. In voicing their disagreement with the panel's refusal to accept the "rather simplistic analysis" of the informal Wilbur letter as the determinant in considering the validity of the administrative practice, the Bryant petitioners charge the Court of Appeals with having "launched a relentless, unprincipled attack" on the administrative construction of the Project Act and having acted "in quest of its chosen result". Bryant Pet. 24. The Court was taunted for having "attempted to justify its upside-down approach" (*Id.* at 25) while it "strained to contrive an interpretation consonant with its

desired result" as part of "the court's misdirected bias" (*Id.* at 27) and "stretched to discount the legislative evidence at every turn" by presenting a "contrived explanation" of Congressional testimony (*Id.* at 28).

Individual members of the class of excess landowners represented by the Bryant petitioners were equally respectful of the Court of Appeals when they appeared before the Senate subcommittee last year urging a legislative exemption for the District. They referred to the "panel of three judges who have probably never even seen the Imperial Valley and certainly don't know the first thing about farming there". *Acreage Limitations in Bureau of Reclamation Projects, supra at 438.* Another spokesman referred to "a three-judge panel, including a retired circuit judge and a district court judge". (*Id.* at 444.) No mention was made that Circuit Judge Koelsch did not go on senior status until only after this case was taken under submission, or that the third judge on the panel was the chief judge of the Ninth Circuit.

The innuendos hurled at the Ninth Circuit by petitioners, both in this Court and before Congress, cannot detract from their total failure to establish sufficient grounds for granting the writ.

CONCLUSION

The various arguments of petitioners received the careful consideration of the panel. The entire Ninth Circuit reviewed the panel's two opinions and no disagreement was registered. Further review is unwarranted and the petitions should be denied.

Dated: November 11, 1979,
San Francisco, California

Respectfully submitted,

ARTHUR BRUNWASSER
Attorney for Respondents